

ST 07-0061-GIL 06/11/2007 CERTIFICATE OF REGISTRATION

The responsible individual named at Step 9 of Form REG-1 is subject to personal liability penalty if he or she willfully fails to file returns and/or pay tax when due. See 35 ILCS 120/2a and 735/3-7, and 86 Ill. Adm. Code 130.701(d) and 700.340. (This is a GIL.)

June 11, 2007

Dear Xxxxx:

This letter is in response to your letter dated May 31, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On 5/21, I spoke with MS at IL DOR. She told me that there was a hold on the account because a social security number was not provided for the person who was listed as being responsible for the filing of returns and paying of taxes. When I inquired why that was necessary for a company, she told me that the person listed would be personally responsible for paying any taxes owed should the company go out of business and still owe taxes.

On 5/31, I spoke with MR at IL DOR. He told me that the person who is listed as being responsible for the filing of returns and paying of taxes would be held responsible only in the case of fraud.

In order to help us determine who should be listed, would you please clarify to what extent the employee listed would be 'personally' responsible? Please see your forms REG-1, Step 9 and REG-3-D, Step 3 as these are the areas in question. Please reply to me at the address listed above.

DEPARTMENT'S RESPONSE:

Step 9 of Form REG-1 and Step 3 of Form REG-3-D are based upon Section 2a of the Retailers' Occupation Tax Act (35 ILCS 120/2a), which states that the application for registration shall contain "an acceptance of responsibility by the person or persons who will be responsible for filing returns and payment of the taxes due under this Act." If this question is not completed, the Department cannot issue you a registration or resale number. See 86 Ill. Adm. Code 130.701(d).

Section 3-7 of the Uniform Penalty and Interest Act (35 ILCS 735/3-7) states that "any officer or employee of any corporation subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act" incurs personal liability when he or she "willfully fails to file a return or make payment or willfully attempts in any other manner to evade or defeat the tax." The penalty imposed under such circumstances is equal to the total amount of tax unpaid by the corporation, including interest and penalties. See 86 Ill. Adm. Code 700.340.

The responsible individual does not act as a guarantor for payment of the corporation's tax liability. The responsible person incurs the penalty only if he or she willfully fails to file returns and/or pay taxes when due.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk